

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
TIRUVANNAMALAI**

**PRESENT : Tr. B.C. GOPINATH, M.L.,
Additional District Judge,
Tiruvannamalai,**

Wednesday, the 2nd day of July, 2025

I.A.No. 1 / 2023 in I.A. No. 1 / 2022 in O.S.No . 241 / 2022

R. Pushpalatha Petitioner / 1st defendant
/vs/
R. Balachandru ... Respondent / Plaintiff

This petition coming before me for final hearing on 05.06.2025 in the presence of Tr. R. Jayavel Advocate for the petitioner and Tr. V. Murugan, Advocate for the respondent, and after hearing the arguments of both, upon perusing the records and having stood over for consideration, till this day, this court passed the following

ORDER

Petition under Order IX Rule 7 CPC, to set aside the exparte order passed against the petitioner / 1st defendant in the above suit on 03.01.2023.

1) PETITIONER'S CASE IN BRIEF:

The petitioner is the 1st defendant in the suit in O.S.No. 241/2022. The respondent / plaintiff has filed the suit for Partition and for other reliefs. The case was posted on 03.01.2023 for filing written statement. But as the petitioner suffered from severe joint pain, she could not contact her counsel to give instructions. Therefore she was set exparte. Petitioner's non-appearance is neither willful nor wanton. Hence the exparte order dated 03.01.2023 passed against her has to be set aside. Hence the petition.

2) AVERMENTS IN THE COUNTER :-

The petition is not maintainable. The averment that the matter was posted to 03.01.2023 for filing written statement and hence she did not appear before this court is false. The further averment of the petitioner that she suffered from severe joint pain and had gone to the hospital, and hence she was not able to meet his counsel to file a Written Statement is false. The averments that the petitioner was affected by severe joint pain has to be proved by the petitioner and she has not filed any document in support of the same. Hence the petition is liable to be dismissed.

3) During enquiry, no evidence, oral or documentary was let in. This Court has perused the materials on record and has considered rival submissions.

4) Now the point for consideration is whether the exparte order passed against the Petitioner / 1st Defendant in the above suit can be set aside or not ?

5) POINT:

From the records, it is seen that the the respondent / plaintiff Balachandru has filed the above suit O.S.No.241/2022 against the petitioner Pushpalatha and others for partition and other reliefs. Records shows that the suit was posted on 03.01.2023 for filing a Written Statement of petitioner / 1st defendant / Pusphalatha. But 1st defendant failed to file a Written Statement and so she was set exparte on 03.01.2023.

6) The petitioner states that she suffered from severe joint pain and was unable to contact her counsel and therefore she was set exparte on 03.01.2023. The respondent / Plaintiff alleges that the petitioner is playing dilatory tactic. Though the reason stated by the petitioner does not appear convincing, this being a suit for Specific Performance and other reliefs, this court is of the considered view that the petitioner can be put to terms while giving an opportunity to contest on merits. The point is answered accordingly.

In the result, the petition is allowed, on condition that the petitioner pays Rs.3000/- as costs to the respondent / plaintiff, on or before 25.07.2025 failing which the petition shall stand dismissed. Call on 28.07.2025.

Dictated to the Steno-Typist of this Court, transcribed by her in computer, corrected and pronounced by me in open court, this the 2nd day of July, 2025.

**Additional District Judge,
Tiruvannamalai.**

